Supreme Court of the United States

OCTOBER TERM, 1952

No. 438

BROWN LAND & ROYALTY COMPANY, INC.
Petitioner

vs.

FRANCES CLARK GREEN, ET AL

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF ON BEHALF OF PETITIONER

May It Please The Court:

Having just received a copy of the brief filed on behalf of respondents and appellees, we note that it is contended in discussing petitioner's Specifications of Error Nos. III and IV, that it was not contended in the Court of Appeals that petitioner desired to offer evidence and that the argument was not made in any of the briefs filed by petitioner in that Court. While this statement is doubtless made in good faith it is entirely incorrect. As a matter of fact at the very outset of its argument on

motion for a rehearing in the Court of Appeals petitioner said:

> *"MAY IT PLEASE THE COURT:*
>
> We respectfully suggest that the effect of Your Honors ruling is to deny Appellant its right to be heard, to offer evidence, and to cross examine its opponents. What this Court has done, in effect, is to say that under no conceivable situation could any evidence be produced which would have the effect of showing that the intention of Appellees was to convey a fee title to their mother. In addition to the facts alleged in the pleadings, which are taken to be true on this motion, and which show that the intention of these people was to vest a title in the donee, it is also possible that in cross examination of Appellees they could be compelled to admit that their purpose was to give a complete title to Mrs. Clark. It may very well be that the possibility of such an admission is not great but this Court's ruling deprives Appellant of the fundamental right to attempt to secure such an admission and to probe the consciences of its opponents. Let us assume that a trial of this matter is had and that one or more of the Appellees testify that it was their intention to give the property involved completely and in fee simple to their mother. In such a situation can it be denied that this intention of the parties would prevail and that a fee title in fact did vest in Mrs. Clark? And is it proper for this Court to make a ruling which takes for granted such a situation cannot occur?"

Despite this contention the Court of Appeals failed to grant petitioner the relief it sought.

As stated in our original brief the point covered by Specification of Error No. IV is supplementary to and in emphasis of Specification of Error No. III. Accordingly, both points were brought to the attention of the Court of Appeals as above indicated.

In any event, the question presented here is whether this petitioner was entitled to a trial and in passing on the propriety of granting a motion to dismiss the well pleaded facts are accepted as the hypothesis of decision by this Court. *Collins vs. Hardyman*, 341 U.S. 651.

In closing we suggest that the prayer of respondents' brief is possibly violative of Section 3, Rule 7 of the Rules of this Court.

Respectfully submitted,

BROWN LAND & ROYALTY COMPANY, INC.

By its Attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing brief have this day been served upon each counsel for respondents by mailing same, postage prepaid, to Richard C. Cadwallader, Louisiana National Bank Building, Baton Rouge, Louisiana, and D. Douglas Howard,c/o Legal Department, The Texas Company, New Orleans, Louisiana, said counsel respectively representing the heirs of Calvin E. Clark and The Texas Company, respondents and appellees.

Shreveport, Louisiana, this_____day of December, 1952.

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Frank J. Looney
Attorney for Petitioner, Brown Land & Royalty Company, Inc.